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June 21, 2007

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Petition for Rulemaking to Change the Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs
RM-11299
Written Ex Parte Communication of Cox Communications, Inc.

Dear Ms. Dortch:

I am writing on behalf of our client Cox Communications, Inc. ("Cox"), in connection with the above-referenced proceeding. Cox previously commented on the initial Bellsouth petition for rulemaking, and now responds to certain issues raised by Verizon Communications in a January 18 ex parte filing.[1]

Verizon argues that certain specific uses of the number portability database create costs that are not related to the main purpose of the database and that can be traced directly to "cost-causers," so that, therefore, it would be appropriate to recover the costs of the database from carriers based on the number of transactions they initiate with the database.[2] Not coincidentally, Verizon's proposal would decrease Verizon's own contributions while increasing the contributions imposed on competitive LECs. Verizon's argument misunderstands the nature of the database and the current cost recovery mechanism, as well as the basic principles the Commission adopted to govern cost recovery. Indeed, the underlying cost recovery principles adopted by the Commission in 1998 remain valid because none of the facts that support those principles have changed. The only changes that should be adopted are those suggested by Cox in its initial comments in this proceeding – expansion of the base of contributors to cost recovery to include voice over IP providers and non-carrier users of the number portability database – and those changes can be made only by the Commission.

Verizon's Premises Concerning Cost Causation Are Incorrect

Like BellSouth, Verizon makes certain assumptions concerning the costs and benefits of number portability that are incorrect. Without these assumptions, there would be no basis for the notion that number portability costs should be recovered on the basis of how many uploads a carrier makes to the number portability database.

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[1] *See* Letter of Ann D. Berkowitz, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, RM-11299, filed Jan. 18, 2007 (the "Verizon Letter").
[2] *Id.*, Attachment at 22.

The first erroneous assumption is that only the carriers that upload data to the database are the beneficiaries of number portability and pooling. This is incorrect because all number portability and pooling transactions benefit all carriers.

The reason for this conclusion is simple: As the Commission concluded when it adopted the current rules, all carriers have a need to route calls accurately, and that can happen only if the database is up to date.[3] Thus, uploads benefit not just the carriers that make the changes, but any carrier that routes calls to those carriers. After all, if a carrier cannot complete calls because it routes them incorrectly, it is not performing its most basic carrier function.

Further, all carriers benefit from pooling transactions because those transactions greatly reduce the need for area code relief. The costs of area code relief to carriers and consumers are well documented, so these benefits are substantial. Moreover, because many pooling transactions are required by the Commission's rules, it is unreasonable to suggest that the financial burden of those transactions should fall on the carriers that are required to undertake them as a matter of national policy.

Verizon's focus on transactions initiated by competitive LECs also demonstrates that its real theory is that incumbent carriers do not cause number portability costs. This theory ignores that incumbent carriers hold the vast majority of the telephone numbers in the database and that they operate the vast majority of the switches that use the database. In other words, incumbent carriers actually have the most to gain from the efficient operation of the number portability database because they need it to route much more traffic than competitive LECs.

There Is No Reason to Modify the Current Cost Recovery Model

Changes in Database Usage Do Not Justify Modifications to Cost Recovery

Verizon presents evidence that appears to be intended to demonstrate a shift in usage of the number portability database that supports a change in the cost recovery methodology. As shown below, this analysis is incorrect, in part because an increase in the number of transactions is not indicative of a cost recovery problem and in part because there are legitimate network reasons for the Type 1 porting events that Verizon isolated in its ex parte submission.

First, the notion that an increase in the number of transactions indicates a need to modify the cost recovery model is incorrect. As a practical matter, the number of database transactions should be growing as competition grows. For that reason, such an increase should not be treated as an unforeseen development that would justify a change in cost recovery.[4]

At the same time, the addition of wireless numbers to the database obviously has been an important factor in the increase in total transactions. There was significant churn in the wireless

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[3] Telephone Number Portability, *Third Report and Order,* 13 FCC Rcd 11701, 11745 (1998) (*"Third Portability Order"*) ("The entire industry benefits from the maintenance of reliable regional databases for providing number portability[.]").

[4] Moreover, as competition increases, the allocation of revenues between incumbent LECs and competitive LECs will shift as well, and competitive LECs will pay a larger share of the database costs.

market even before number portability was implemented, and there is a direct correlation between porting volumes and the addition of wireless numbers to the database.

One consequence of the increase in porting transactions has been that the price per porting event has been declining steadily over time. Thus, increases in volume do not lead to one-for-one increases in costs. Verizon's ex parte does not acknowledge this fact, and actually presents the cost per porting event as fixed.[5] The declining cost-per-port ameliorates the potential overall cost increases that otherwise would result from larger number of porting transactions.

Moreover, Verizon's claim that Type 1 porting events should not be treated in the same way as other porting events is unfounded. Verizon's theory is that Type 1 events are, essentially, for the convenience of the carrier. However, there are significant network management reasons for Type 1 porting events. For instance, reconfiguration, load balancing and porting unassigned numbers to a new switch are not steps a carrier undertakes merely for its own convenience; each is a part of proper network management, which benefits all customers. In some cases, such as porting unassigned numbers to a new switch, the change will help to conserve numbering resources, which benefits all carriers in the same way as pooling. In addition, some of these events are the results of decisions by incumbent carriers or regulators, such as changes in rate center boundaries, which may require competitive carriers to modify their number assignment practices.

There Are Independent Reasons to Maintain the Current Model

While the evidence does not support the claim that non-incumbent carriers are burdening the database with unnecessary porting events that benefit only themselves, there also are independent reasons that continue to support maintaining the current cost recovery model. In particular, it is important to understand that Verizon and other incumbents do not bear a significant burden under the current regime, while the BellSouth/Verizon proposal would significantly increase the costs faced by non-incumbents. Equally important, shifting to a transactions-based cost recovery mechanism would not be consistent with the way costs actually are incurred to operate and maintain the database.

Verizon attempts to add urgency to its argument by claiming that its share of number portability cost recovery is burdensome. In fact, Verizon's payments amount to only a very small fraction of its revenues, and it is no more burdensome than what other carriers pay. While Verizon indicates that it pays about $25 million annually to support the database today,[6] this is about two one-hundredths of one percent of its annual revenues, or about the same amount of money the company takes in every two hours. And while Verizon notes that this amount has been increasing, Verizon's non-incumbent competitors are experiencing the same increases and,

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[5] Verizon Letter, Attachment at 6. Verizon's data may be misleading in one other respect. It is likely that the decrease in Verizon-initiated porting events from 2005 to 2006 is related to Verizon's acquisition of MCI. This may have caused a spike in porting events in 2005 when the merger was consummated and a decrease in 2005 as a result of MCI's effective exit from the local telephone business.

[6] Verizon Letter, Attachment at 9.

in many cases are experiencing greater increases because their revenues are growing much more rapidly than Verizon's.

While costs already are shifting to non-incumbents under the current system, a transactions-based cost recovery mechanism would shift them much more rapidly and would significantly increase the burden of number portability cost recovery on competitive LECs. Cox estimates that a change to a transactions-based proposal would increase its number portability costs by approximately 25 percent in the first year. Moreover, to reduce those costs, Cox and other non-incumbents might be forced to adopt less efficient network management strategies, including less efficient management of numbering resources, to avoid being subjected to additional transactions-based fees.

At the same time as Verizon overstates the extent of the burden it bears, it also misstates the nature of the costs incurred to operate the number portability database. Verizon's analysis assumes that a meaningful percentage of the costs of the database actually would be caused by uploads, but there is no basis for this assumption. In practice, most of the costs of operating and maintaining a database are fixed, not variable. These costs include operating computing and storage capacity, conducting backups, performing maintenance, preparing and implementing updates to the underlying software and other tasks that are not dependent on the number of uploads or downloads.

Verizon illustrates its argument with various examples based on the current amount of per-transaction compensation paid to NeuStar for operating the database. These illustrations are intended to suggest that database costs are variable. However, closer examination of the contractual arrangements that have been in place since number portability first was implemented shows that this is not the case. In particular, the fixed nature of the costs of operating the database is reflected in the pricing under the agreement between NeuStar and North American Portability Management, LLC ("NAPM"). Prices have decreased consistently on a per-transaction basis, and will continue to do so over the life of the current NeuStar-NAPM contract.[7] Importantly, those per-transaction price decreases are, as NeuStar explains, based on "transaction volumes."[8] Such price decreases are characteristic of recovery of costs that are largely independent of the volume of usage, not of costs that are dependent on usage.[9]

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[7] NeuStar described the pricing regime as follows in its 2006 Form 10-K:

> Pricing for 2006, including volume-based credits, remained unchanged at $0.95 per transaction. For 2007, pricing is $0.91 per transaction regardless of transaction volume. Pricing from 2008 through the expiration of the contracts contains volume-based pricing that ranges from $0.95 per transaction to $0.75 per transaction, with the precise rate being determined based on transaction volumes during within the applicable period.

NeuStar, Inc., Form 10-K, Mar. 1, 2007 at 28.

[8] Verizon elides this fact by showing only a fixed price per transaction in its examples. Verizon Letter, Attachment at 6. Verizon's argument also neglects the possibility that variable costs also might be related to download events, which are distributed across the industry in a pattern that correlates to revenues.

[9] This pattern is similar, for instance, to the cost recovery model for carrier common line charges, which recovered largely fixed costs with per-minute charges. As call volume increased, the

In this context, adopting a cost recovery scheme that imposed charges on carriers based on their uploads to the database would improperly shift the cost-recovery burden to non-incumbent carriers. In a largely fixed-cost environment, carriers that upload data are not causing changes in cost, and so recovering cost on the basis of that activity would be unreasonable.

Given that the costs of operating the database are largely insensitive to the number of transactions, the current revenue-based cost recovery mechanism is entirely appropriate, as it reflects the relative benefit that each carrier gets from the existence of the database.

Finally, Verizon fails to account for the significant transaction costs that would be associated with modifying the cost recovery system to a per-transaction model. The current mechanism, by reporting on data already reported by individual companies, is highly efficient. A per-transaction system would require NeuStar to capture individual carrier data and create bills with sufficient detail for carriers to verify their accuracy. The costs of doing so could be substantial, and would be borne by all carriers and, ultimately, their customers.

The Commission Should Address Other Issues Relating to Cost Recovery

As described in the initial comments, Cox does not oppose all change to the number portability cost recovery system. There are two changes that would reduce the burden on telecommunications carriers while recovering costs from other beneficiaries of the database.

The first change is to require providers of interconnected voice over IP services to contribute to recovery of database costs. The case for recovering costs from voice over IP providers is quite strong. Interconnected voice over IP providers hold a significant percentage of telephone numbers and have been indirect beneficiaries of number portability since they first began to provide service. Now they are direct beneficiaries in light of the Commission's decision to require them to make portability transparently available to their customers.[10]

For that reason, leaving interconnected voice over IP providers out of the cost recovery regime is inequitable. It also creates a competitive advantage, since they are not subject to costs that are incurred by more traditional carriers, even though they obtain the same benefits from number portability. Similar considerations led the Commission to require interconnected voice over IP providers to contribute to the federal universal service fund, and there is no reason not to apply the same logic in this case.[11]

Second, the Commission should require contributions to the cost of the database for non-carrier uses of the database. The database now is used for various non-portability purposes, including by telemarketers to screen mobile numbers and by law enforcement agencies. While these users are required to pay any incremental costs incurred as a result of their use of the

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carrier common line charge decreased so as to avoid over-recovery of those fixed costs. Policy and Rules Concerning Rates for Dominant Carriers, *Second Report and Order,* 5 FCC Rcd 6786, 6793-95 (1990) (setting price cap adjustment mechanism for carrier common line charge to reduce charges are volume of traffic increased).

[10] *See* Time Warner Cable Request for Declaratory Ruling, *Memorandum Opinion and Order,* 22 FCC Rcd 3513, 3522-23.

[11] Universal Service Contribution Methodology, *Report and Order and Notice of Proposed Rulemaking,* 21 FCC Rcd 7518, 7538 (2006).

database (in much the same way that carriers pay the costs for reports that are separate from the main database functionalities), they do not contribute towards any of the fixed costs of maintaining and operating the database. As a result, these non-portability uses are subsidized by carriers and their customers. In the absence of direction from the Commission, this situation does not appear likely to change.

The Commission, given its plenary jurisdiction over numbering and number portability, has the power to require that these other users contribute to the costs of maintaining and operating the database. Moreover, requiring all users to contribute to covering number portability costs would be consistent with the Section 251(e)(2) requirement that cost recovery be conducted on a "competitively neutral basis."[12] While any cost recovery mechanism that imposes a burden on carriers without accounting for other users raises competitive neutrality issues, that concern is particularly acute in the case of the exclusion of interconnected voice over IP providers, which compete directly with traditional carriers. Consequently, competitive neutrality requires that interconnected voice over IP providers contribute to number portability cost recovery.

Only the Commission Can Change the Cost Recovery Rules

Finally, the Commission should acknowledge that it is the only entity that is empowered to modify the cost recovery rules. These rules were adopted by the Commission, and neither the North American Numbering Council ("NANC") nor NAPM can change them without express Commission authorization.

The Commission has given the NANC and NAPM specific roles in addressing numbering issues. The most important constraint on both the NANC and NAPM is that they cannot create new rules and policies that are different than or in conflict with the Commission's existing rules and policies.[13] For instance, the NANC and NAPM cannot determine that number portability should be eliminated, or change the requirements for carriers that wish to recover their number portability costs because those policies have been set by the Commission.

The same principle applies in this case. The Commission adopted specific requirements for recovery of number portability costs in a series of detailed, carefully considered orders.[14] Those orders specifically adopted the current mechanism and held that it is consistent with the requirements of Section 251(e)(2).[15] The Commission also specifically rejected a usage-based cost recovery mechanism.[16] Its reasons for adopting the current mechanism and for rejecting a

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[12] 47 U.S.C. § 251(e)(2).

[13] *See* 47 C.F.R. § 52.11 (describing powers of the NANC); 47 C.F.R. § 52.32 (describing cost recovery mechanism for local number portability).

[14] *See, e.g.,* Numbering Resource Optimization, *Third Report and Order and Second Order on Reconsideration in CC Docket No. 99-200,* 17 FCC Rcd 252; *Third Portability Order;* Telephone Number Portability, *First Report and Order and Further Notice of Proposed Rulemaking,* 11 FCC Rcd 8352 (1996)

[15] *Third Portability Order,* 13 FCC Rcd at 11745.

[16] The Commission's reasons for rejecting usage-based charges included concern that usage-based charges would disproportionately fall on new carriers and that usage-based charges would

usage-based approach both were grounded in the statutory requirements for a cost-recovery regime, and therefore it is not within the power of either the NANC or NAPM to reverse the Commission's conclusions. That prerogative is reserved to the Commission, and cannot be assumed by its delegees.

For these reasons, Cox submits that the Commission should reject the proposal to impose transaction-based cost recovery for the number portability database and should, instead, adopt rules that require contributions from interconnected voice over IP providers and non-portability uses of the database.

In accordance with the requirements of Section 1.1206 of the Commission's rules, an original and one copy of this written ex parte communication are being filed with the Secretary's office on this date.

Please inform me if any questions should arise in connection with this letter.

Respectfully submitted,

J.G. Harrington

Counsel to Cox Communications, Inc.

JGH/vll

cc: Deena Shetler
Chris Barnekov
Margaret Dailey

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discourage carriers from uploading information necessary to maintain the accuracy of the database. *Id.*